

OP-ED REWRITE  
FDA/POLITICS  
January 24, 1996

Everyone, even the tobacco industry, agrees that kids should not smoke cigarettes or use smokeless tobacco. But it's disturbing that the Clinton Administration proposes to address a social problem with onerous federal regulations that will not work.

The sad reality is that the Administration is playing politics. Taking on the tobacco industry might seem like smart politics to the President and his advisors, but giving the Federal Food and Drug Administration (FDA) power to regulate tobacco is not the right answer to attack teenage smoking.

The President's political team has an embarrassing habit of openly disclosing its political calculations. On the day when the President announced his support for the Food and Drug Administration's proposal to regulate tobacco, The New York Times reported that the President's aides thought the President would gain political points by "standing up for a cause he believed in."

Let's quit kidding ourselves. The issue here is not youth smoking; the issue is how to gain some political traction for a president who too often appears to lack any conviction.

In all the hoopla surrounding the FDA's announcement last August of its plan to regulate tobacco, there was not mention of the 1992 amendment to the Public Health Service Act that focused directly on how to effectively address the youth smoking issue-access.

In that legislation, Congress wisely determined that the best policy for preventing teenage consumption of tobacco to ensure that minors do not have access to tobacco products, and that means enforcing the minimum age as on the books in all 50 states.

Congress provided incentives for states that enforce those laws by conditioning substance abuse block grants on the success of their efforts. Congress further directed the secretary of Health and Human Services to write rules and made legislation to guide those state efforts.

In 1993, HHS finally proposed rules designed to give the states the guidance Congress requested under this law.

Those rules were made final earlier this year.

2047031373

Has the Administration ignored Congress and instituted delays because its reasonable approach does not allow the President to "get tough" with the tobacco industry in an election year?

Instead of helping states in their efforts to enforce minimum age laws and keep cigarettes out of the hands of kids, why has the Administration proposed radical advertising restrictions, even though experts tell us that kids use tobacco for reasons unrelated to advertising such as peer pressure, parental influence, and rebellion?

The Administration can do all that because it's more concerned with election year politics than results.

In its eagerness to grab onto a hot political issue, the Administration is ignoring the very serious outcome of where the FDA jurisdiction over tobacco will lead.

While the Administration has stated publicly that it is not seeking a prohibition of tobacco products, the FDA must verify that the drugs and medical devices it regulates are "safe and effective." FDA Commissioner David Kessler and previous Commissioners have said that the agency could never find cigarettes "safe and effective."

Just how does the Administration propose to resolve this legal conundrum if, as the FDA proposes, nicotine in tobacco is declared a drug and cigarettes are deemed to be "drug delivery devices?"

Does anyone doubt that, should those classifications be allowed to stand, some anti-tobacco group will eventually sue the FDA to compel the agency to enforce the law and ban tobacco altogether? This is why the nation's tobacco companies are fighting the FDA plan so vigorously.

By attempting to impose FDA jurisdiction over tobacco products -- an act the FDA and Congress have long recognized is not within the FDA's legal jurisdiction -- the Administration risks setting in motion a sequence of events that will lead to a new era of prohibition. Can anyone question why the Administration's proposals prompted a federal lawsuit by the tobacco companies?

The Administration has couched its proposals as necessary to protect children, but the proposals are so broad that they needlessly trample the rights of adults to choose to smoke.

Increasingly, Americans do favor less regulation by the federal government of their personal lives. The vast majority of Americans believe adults are well informed of the health risks associated with tobacco use and that smoking is a choice they should be free to make.

2047031374

Isn't it time we tried the solutions already available to us to attack the issue of youth smoking? Do we really need the FDA to usher in a new era of Prohibition? Isn't it time to get politics out of this issue and let reason and common sense prevail?

2047031375